



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: A.K NDUNG’U, J

PETITION NO. 7 OF 2019

THOMSON KERONGO.....1ST PETITIONER

RIGENA HUMAN RIGHTS WATCHDOG ORGANIZATION.....2ND PETITIONER

VERSUS

DR. ROBERT RIPNG’ENO CHERUIYOT.....1ST RESPONDENT

DR. OTIENO ENOCK ONDARI2ND RESPONDENT

PROCUREMENT OFFICER KISII TEACHING AND

REFERRAL HOSPITAL.....3RD RESPONDENT

THE KISII TEACHING AND REFERRAL HOSPITAL.....4TH RESPONDENT

THE KISII COUNTY GOVERNMENT.....5TH RESPONDENT

THE ETHICS AND ANTI-CORRUPTION COMMISSIO.....6TH RESPONDENT

RULING

1. The petition herein was lodged in court on 20/11/2019. At the initial ex parte hearing, directions were given that the same be served. Responses which include a preliminary objection from the 1st and 2nd respondents were filed.
2. On the 27/11/2019 the parties appeared before the court and directions were given that the matter be mentioned on 18/12/2019 for directions as to hearing.
3. On the 18/12/2019 the trial Judge was not sitting and the sitting sister court ordered matter to be mentioned on 13/2/2020 for directions.
4. In the intervening period, the petitioner on the 27/1/2020 filed a notice of withdrawal of the petition against the respondents.
5. On the same date the petitioner filed, in the same file, a notice of motion under certificate of urgency seeking various reliefs. When this application was placed before court, directions were given that the matter be placed before me today for directions as to hearing.
6. There was no appearance for the petitioner when the matter came up today.
7. Mr. Godia has submitted that no leave was sought to amend the petition and therefore the amended petition should be struck out to pave way for the hearing of the preliminary objection by the 1st and 2nd respondents.
8. Ms Wairimu has stated that the purported withdrawal is not in line with the **Mutungu rules** as no notice to withdraw was filed. Even assuming there was a withdrawal, the application dated 27/1/2020 was filed in a vacuum as there was no pending petition. Again, even if the aim was to amend, leave ought to have been sought as per **rule 18** of the **Mutungu rules**.
9. Mr. Mosota has urged that the matter be struck out for want of prosecution.

10. I have considered the record and the submissions by counsel. There is on record a notice of withdrawal filed and received in this court on 27/1/2020. By virtue of this withdrawal, this petition being Petition No. 7 of 2019 was thus disposed of and the file closed in the absence of any order varying or setting aside the withdrawal notice.

11. Having withdrawn the petition, the petitioner could not legally and procedurally file the application dated 27/1/2020 in the withdrawn file. That filing is a nullity *ab inito*.

12. Indeed the audience given to the petitioner on 3/2/2020 and on 6/2/2020 was in error as there was no proper petition before the court following the withdrawal of the same on 27/1/2020.

13. In the premises, the application dated 27/1/2020 is struck out and the file herein deemed closed by virtue of the withdrawal notice dated 27/1/2020. The respondents shall costs.

Dated, signed and delivered at Kisii this 13th day of February, 2020.

A. K. NDUNG'U

JUDGE

Mr. Mosota, advocate for 3rd respondent

Mr. Godia, advocate for 1st and 2nd respondents

Wairimu Kamau, advocate for 6th respondent